

## No 56.

*Jus mariti*  
how to be  
ascertained,  
with respect  
to debts fall-  
ing to the  
wife by suc-  
cession, as  
nearest of  
kin.

1744. June 20. The CREDITORS of TANSH *against* DUNBAR.

THE relict of Mr James Dunbar minister of Duffus, having confirmed herself executrix-dative to her husband, upon the credit of her contract of marriage, intromitted with his whole effects, which were partly sums bearing annualrent and partly simply moveable, to an extent much exceeding her ground of credit. After the relict's death, upon a submission between her Executors, and Margaret Dunbar, as nearest of kin to the said Mr James Dunbar her brother, and Æneas Tansh her husband, for his interest, the balance due to the nearest of kin being settled by decret-arbitral, the creditors of Æneas Tansh arrested and obtained decrees of furthcoming; whereof Margaret Dunbar his wife, being properly authorised, pursued reduction, in which the Lords proceeded upon the following principles:

That the period at which the interest of all concerned in the executry is to be judged of, is the term of the defunct's death; and if at his death, there be effects simply moveable, which fall under the *jus mariti*, and others which are heritable *quoad fiscum et relictam*, and that there be also debts due by the defunct, some heritable, others moveable, the moveable debts must affect, in the first place, the effects that are simply moveable, *et vice versa*; and that it will not alter the case in the question between the nearest of kin and her husband, that the executor, whose duty it is to turn all into money, may have uplifted the sum in an heritable bond; for that will not vary the interest, which the wife, who is nearest of kin, has in the question with her husband; and as little will it vary the case, that a creditor of the defuncts has, upon a debt that was heritable, affected a debt due to the defunct, or other effects of his that were moveable, *aut vice versa*. For still in the question between the nearest of kin and her husband, the balance remaining in the hands of the executor-creditor will fall under the *jus mariti* or not, according to the state of the subject at the defunct's death, whatever may have been the nature of the debt due to the executor-creditor, or of the subjects confirmed and intromitted with by him, or whatever have been the method, whether by decret-arbitral or otherways, that the accounts have been settled between the executors-creditors or his heir, and the nearest of kin and her husband for his interest.

*Kilkerran, (HUSBAND AND WIFE.) No 7. p. 259.*

## No 57.

The husband  
can renounce  
his right of  
administra-  
tion.

1745. February 5. TRUSTEES of MURRAY *against* DALRYMPLE.

A WIFE, to prevent a jointure from a former husband, from being affected by the creditors of a second husband, vested it in trustees for the behoof of herself and family. The person upon whose estate the jointure was secured, *alleged*,